IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 1170 OF 1980

The Cotton Corporation
of India Ltd ......Plffs.
vs.
Rajasthan Spinning and
Weaving Mills Ltd and Ors. ......Defnds.

R.C. Shah with D.M. Ganatra
i/b. Divya Shah and Associates for
the plaintiffs.

Mr. Bomi Patel with Gautam Bhalekar
i/b. M/s. Mulla and Mulla and Cragie
Blunt and Caroe for the defendants.

CORAM: S.U. KAMDAR, J.

DATE : 8TH AUGUST, 2005.

JUDGMENT :

1. The present suit is filed for recovery of a sum of Rs.14,09,947.67/- alongwith interest at the rate of 20% p.a. from the date of the suit till payment and/or realisation. Some of the material facts of the present case which are relevant for the purpose of determination of the

present suit are briefly enumerated as under :

2. The plaintiff is an Cotton Corporation of India Ltd wholly a government of India undertaking and is a canalising agency inter-alia undertaking the work of organising and undertaking purchase, sale and transport of cotton (imported into or grown in India). The plaintiff is a canalising agent under the import export policies which has been announced by the government from time to time.

3., It is the case of the plaintiff that the plaintiff on behalf of Union of India entered into an bilateral agreement with various countries to import cotton in accordance with the import policy promulgated by the Union of India. This import is effected by the plaintiff on behalf of various cotton textile mills and or industries. This policy was introduced for import of cotton because of the shortage of the availability thereof in India. Under the terms and conditions of the said policy it was provided that the import of the said item will be effected by the plaintiff and those

parties being the textile mills can register themselves with the plaintiff for the purpose of supply of the said cotton. Thus goods were sold by the plaintiff to various mills after being imported on the actual user condition to textile mills. For the purpose of the purchase of the aforesaid cotton the mills required themselves to register and obtain the necessary quota from the Textile Commissioner as per the import export policy notified by a trade notice. After receiving the application the textile Commissioner will allocate the quota and issue actual user quota letters to the respective cotton textile mill. Under the import export policy of the government of India the plaintiff were designated as a canalising agency and were given bulk licences and after the allocation of the textile quota by the Textile Commissioner the said mill were entitled to actual user sub-licence for the purpose of taking delivery of the said imported cotton.

4. Sometime in or about March, 1977 the plaintiff issued a circular inter-alia providing that the

mills who are in need of cotton can register their requirement with the plaintiff. It is the case of the plaintiff that in pursuance to the said circular the defendant requested the plaintiff to allocate about 2000 bales of Argentine Cotton, shipment May 1977, by their letter dated 17.3.1977. Subsequently the Textile Commissioner by their letter dated 28.3.1977 issued an allocation of 500 bales of Orleans/Texas cotton and 25 bales of Argentine/Cotton. By the said letter the Textile Commissioner informed the defendant no.1 that the said quota is allocated to defendant no.1 and a copy thereof was endorsed to the plaintiff. The said letter of the Textile Commissioner dated 28.3.1977 inter-alia provided under clause-9 as under :

> "Acceptance or otherwise of the quotas should be intimated to the Cotton Corporation of India Ltd., and to this office telegraphically within fifteen days of the issue of this quota letter."

5. Subsequently thereof the plaintiff prepared a contract bearing no. G/483 dated 28.3.1977 and

forwarded to the defendant no.1 for purchase of 500 bales of Orleans/Texas cotton at the rate of Rs.4,550/- per candy, CIF, Bombay, Cochin, Bhavnagar-April/May shipment and 25 bales of Argentine Cotton at Rs.4,600/- per candy April/May shipment. It is the case of the plaintiff that though the said contract bearing No.G/483 is not accepted and signed by the defendant no.1 by virtue of the provisions contained in the said contract particularly Clause-33 thereof there is a concluded contract arrived at between the plaintiff and defendant no.1. The said clause-33 of the contract reads as under :

> "33. If the duplicate copy of this agreement is not returned by the Mills duly signed within seven days from the receipt of this agreement, it will be deemed to have been accepted by the mill."

6. It is further the case of the plaintiff that thereafter the plaintiff imported the said goods and by letter dated 27.6.1977 informed the defendant that the goods are likely to arrive by

s.s. Jalarashmi and the defendant should make arrangement for the payment and clearing arrangement immediately. In response thereof on 30.6.1977 the defendant contended that they never placed any such order with the plaintiff for import of the said goods. It was also provided that they have neither accepted the said contract nor given the bank guarantee and therefore the shipment purported to be on their behalf should be cancelled. Thereafter it seems that the said goods arrived at Bombay and the plaintiff was required to clear the said goods as the defendant refused to clear the same and refused to accept the said contract. On such arrival of the goods the plaintiff issued a telegram to the defendant calling upon them to clear the goods. It seems that a detailed correspondence was exchanged between the parties. On 1.8.1977 the Textile Commissioner also addressed a letter to the defendant threatening that on failure on their part to clear the goods the defendant no.1 is likely to be debarred from getting any further allocation of the quotas. However the defendant did not clear

the goods. Ultimately the plaintiff issued a notice to the defendant no.1 on 1.10.1977 interalia stating therein that if the said 525 bales is not released from the port by the defendant the same would be sold by the defendant to a third party. Accordingly the plaintiff had disposed off the said goods and has filed the present suit for the recovery of loss suffered by the plaintiff after giving credit for the sale proceeds received. The details of the particulars of the claim of the loss suffered are set out in Ex.B to the plaint. In the aforesaid circumstances the plaintiff is now claiming in the present sut an amount of loss suffered by them on the ground that there is concluded, valid and binding contract on the defendant but the defendant has failed to honour the same and in breach of the said contract, the defendant has became liable to make payment for the loss suffered by the plaintiff.

7. The defendant has on the other hand filed a written statement and has inter-alia contended that

there is a concluded and binding agreement arrived at between the plaintiff and the defendant. The defendant has contended that under the terms and conditions of the contract it is necessary that there has been an acceptance of the contract by the defendant and the plaintiff cannot unilateraly foist a contract on the defendant. The defendant has contended that neither in pursuance of the said contract the defendant has given any bank guarantee which is a condition precedent arrived at a concluded and binding agreement. The defendant has also pointed out that even the quota issued by the Textile Commissioner has also not been accepted by the defendant and thus there is no concluded contract between the parties and therefore the plaintiff is not entitled to any decree. On the merits f the case the defendant has submitted that once there is no concluded contract the question of the defendant being liable for any payment of any damages on purported breach of the contract cannot arise. The defendant has in the written statement has also disputed the so called claim of the damages raised by the plaintiff. On the aforesaid

pleading the following issues were framed.

1. Whether this Honourable court has no jurisdiction to entertain and try the suit as stated in the written statement ?

2. Whether the suit is barred by the law of limitation as stated in para-4 of the written statement ?

3. Whether the plaintiff prove that there is a concluded contract between the defendants and the plaintiffs whereby the defendants agreed to buy 500 bales of orleans/texas cotton and 25 bales of Argentinian cotton from the plaintiffs as stated in para-4 of the plaint ?

4. Whether the terms of the contract are such so as to render the contract void as stated in para-6 of the written statement ?

5. Whether the plaintiffs prove that the defendants hd not fulfilled their obligations to take delivery of the cotton allotted to them ?

6. Whether the plaintiffs prove that they suffered loss of Rs.14,09,947.67/- on account of breach committed by the defendants ?

7. What reliefs/order ?

8. Learned counsel appearing for the defendant has not pressed the Issue No.1 and 2. Issue no.3 which is the main issue between the parties if it is answered against the plaintiff and in favour of

the defendant in negative then the question of deciding the subsequent Issue NO.4, 5 and 6 does not arise. The plaintiff has led the oral evidence of one MR.K.K. Srivastav and Mr. V.Munnikrishnan. Both the parties have agreed that the evidence of Mr. A.K. Srivastav should be treated as invalid as he was not aware of facts of the case and only the oral evidence of V.Munnikrishnan should be taken into consideration.

9. The parties have filed documents in the present proceedings being Ex.P.4 to Ex.P.50 and Ex.P.51 to Ex.P.58. The defendant have not lead any oral evidence but has produced Ex.D.1 which is the same contract as Ex.P.7. In the light of the aforesaid oral evidence and the documentary evidence produced by the parties before me I am required to determine first the Issue No.3 and if the answer of Issue No.3 is positive that there is a binding contract between the parties then I am required to determine the remaining issues in the present suit.

10. In so far as Issue No.3 is concerned learned

counsel for the plaintiff has contended that there is a valid and binding contract between the parties. He has contended that the reading together of circular dated 12.3.1977, letter of the first defendant dated 17.3.1977, allocation of quota by Textile Commissioner by the letter dated 28.3.1977 and the contract dated 28.3.1977 there is no manner of doubt that there is a concluded and binding contract between the parties. It has been contended that subsequent letter dated 30.6.19777 seeking to deny that the Bombay office of the first defendant had any authority to write a letter dated 17.3.1977 and purported to cancel the shipment itself indicates that there is a concluded and binding agreement between the parties. It has been further contended that Clause-33 of the contract specifies the mode of acceptance of the contract. It prescribes that non-acceptance by a written letter within a prescribed period of time would amount to acceptance of contract. It has been thus contended that by virtue of Clause-33 of the said agreement even if the defendant has not executed the said contract and forwarded the same back to

the plaintiff there is still a valid and binding contract between the parties which is finally concluded and that the defendants are liable for breach thereof. On the other hand the learned counsel for the defendant has contended that there is no concluded and or binding agreement. He has drawn my attention to the circular dated 12.3.1977 inter-alia providing that the party who accepts the contract has to give the bank guarantee in a prescribed format given over-leaf at the rate of Rs.600/- per bale. The proforma of the bank guarantee is set out on the reverse of the said letter. He has also pointed out that the allocation by the Textile Commissioner dated 28.3.1977 was itself subject to acceptance within 15 days from the issuance of the said quota letter. It is an admitted position that pursuant to the said clause-9 the defendant has not accepted the said quota within 15 days as required or even thereafter. He has further pointed out that even the contract dated 28.3.1977 is neither signed nor accepted by the defendant and therefore it is his contention that the plaintiff cannot unilaterally

force upon the contract on the defendant which the defendant has not accepted.

11. I have considered the pleas of both sides on the aforesaid issues. I am of the opinion that there is no concluded and binding agreement between the parties. Firstly the circular which has been issued by the plaintiff dated 12.3.1977 is not addressed to the defendant herein but it is a general circular issued to all the mills. The said circular dated 12.3.19777 can be treated only as an invitation to offer. The said invitation to offer was subject to a condition that the bank guarantee under a prescribed proforma should be given in a prescribed format calculated at the rate of 600 per bale. By a letter dated 17.3.19777 the defendant asked for allocation of 2000 bales of argentine quality cotton-shipment, May-1977. Further the said letter dated 17.3.1977 is not an acceptance of the said invitation to offer because it is a settled law that acceptance to offer has to be accepted in a manner prescribed by the offerer while issuing such an invitation to offer. The

letter dated 17.3.1977 did not contain the bank guarantee. Even the quota allocated on 28.3.1977 by the Textile Commissioner also cannot be either as an offer from the plaintiff in any event the same was subject to acceptance thereof. The said letter of quota has not been issued by the plaintiff still the same also provided for acceptance of the quota letter within a period of 15 days from the receipt thereof. It is an admitted position that unless a party accepts the said quota issued by the Textile Commissioner he cannot enter into any agreement for purchase of cotton from the plaintiff. In the present case admittedly no such quota issued by the Textile Commissioner has been accepted by the defendant. Admittedly no such acceptance has been communicated. Thus neither there was an offer nor the acceptance of any such offer by either of the parties. The letter dated 17.3.1977 by the defendant no.1 provided for a purchase of 2000 bales of argentine shipment. The same is not accepted by the plaintiff herein. But the plaintiff has prepared the contract of 28.3.1977

for 525 bales for 500 bales of texas cotton and 25 bales of argentine cotton. Thus the contract dated 28.3.1977 is at the highest a counter offer by the plaintiff to the defendants herein. Thus the counter offer has not been accepted by the defendant by executing the said contract. The reliance placed on Clause-33 in the aforesaid circumstances is of no meaning because clause-33 proceeds on a footing that a concluded and binding agreement has been arrived at. This document dated 28.3.1977 is a formal agreement and thus only required to be signed within seven days from the receipt of the same. Even assuming that the said contract dated 28.3.19777 is an offer by the plaintiff for supply to the defendant for the said 525 bales of cotton, in my opinion, clause-33 does not make the said contract concluded and binding by non-acceptance of the said offer. The learned counsel for the plaintiff has however relied upon the provisions of Section 7 of the Contract Act. The said provisions of s.7 of the Contract Act reads as under :

> 7. Acceptance must be absolute-In order to convert a proposal into a promise the acceptance must -
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> (1) be absolute and unqualified.
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> (2) be expressed in some usual and reasonable manner, unless the proposal prescribed the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise, but if he fails to do so, he accepts the acceptance.

12. It has been thus contended by the learned counsel that the mode of acceptance can be prescribed by a party and if such a mode of acceptance is prescribed then the acceptance of the said offer has to be in a prescribed mode of acceptance. It has been thus contended that in the present case Clause-33 provided for mode of acceptance by non-acceptance of the contract and thus because the defendant no.1 did not accept the contract a concluded and binding agreement has been arrived at. In my opinion the aforesaid contention has no merits. Section 7 of the Contract Act

provides that in order to convert a proposal into a promise the acceptance must be absolute and unqualified and be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise, but if he fails to do so, he accepts the acceptance.

13. In the present case reading of Clause-33 provides that the acceptance has to be in writing duly signed and return the same within seven days from the receipt of the agreement. The deeming fiction provided thereof of acceptance by detail is not a manner of acceptance prescribed under clause-33. It is because that under s.7 sub-section 1 it is necessary that acceptance must be absolute and unqualified and in addition to sub-section 2 it has to be in a manner prescribed.

The manner prescribed is by execution of the agreement under clause-33. The deeming fiction provided a consequence of non-acceptance is not a manner prescribed for acceptance of the proposal u.s.7 but merely a consequence of non-acceptance in the manner prescribed therein. In my opinion it is not possible to hold that by virtue of clause-33 there is a concluded and binding agreement arrived at between the parties. Admittedly when pursuant to the circular being invitation to an offer the plaintiff has not given the bank guarantee nor have accepted the same. Secondly because the quota of the Textile Commissioner was not accepted in accordance with the clause-9 of the said quota letter there is non-satisfaction of condition precedent that a person must have quota duly issued by the Textile Commissioner to be eligible to enter into the contract with the plaintiffs for purchase of cotton. In my opinion looking at the aforesaid correspondence together it is not possible to hold that there is a concluded and binding agreement between the parties. It is well settled that a concluded and binding agreement must be absolute

and clear and cannot be infered as contended by the plaintiff by relying upon Clause-33 of the said agreement. In the light of the aforesaid fact I hold that there is no concluded, legal and binding agreement between the plaintiff and the defendants in the present case. I therefore answer Issue No.3 in favour of the defendant and against the plaintiff. In the light of the view I have taken as above it is not necessary to consider the other issues which are framed between the parties. I accordingly pass the following decree.

Suit is dismissed. However there shall be no order as to costs.

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